since the plaintiff cannot recover in *quantum meruit*. *Donovan* v. *Harriman*, 124 N. Y. Supp. 194 (Sup. Ct., App. Div.).

The court in this case failed to distinguish between true contract and quasi-contract, the latter being imposed by law irrespective of the intent of the parties in order to effect an equitable result. See *Hertzog* v. *Hertzog*, 29 Pa. St. 465, 468. It is generally held that where services have been rendered under an oral contract within the Statute of Frauds, a recovery may be had therefor in quasi-contract to the extent of the reasonable value of the benefit conferred on the defendant, the obligation admittedly being imposed by law. *Day* v. *New York Central R. Co.*, 51 N. Y. 583. And the fact that the defendant's liability under the express contract is contingent is immaterial. *Cadman* v. *Markle*, 76 Mich. 448. This case is an analogous one, the express contract being unenforceable not because of any inherent fault but by a rule of evidence excluding the plaintiff's testimony. Hence an action of quasi-contract for the value of the services should be allowed, to prevent the unjust enrichment of the estate of the deceased at the plaintiff's expense.

RES JUDICATA — MATTERS CONCLUDED — ISSUES MATERIAL TO THE JUDGMENT. — A former suit between the parties was dismissed on the technical ground that the complaint bore a deficient court-fee stamp, and on the merits. *Held*, that the technical reason was sufficient for the determination of the case, and that the decision on the merits, being unnecessary, has not the force of *res judicata*. *Irawa* v. *Satyappa*, 12 Bombay L. Rep. 766 (Bombay, App. Civ. Ct., Aug. 4, 1910).

In a former suit between all of the essential parties to the present action, the court decided in favor of the plaintiff on a question raised by the pleadings and argued by counsel, but rendered judgment on another ground for the defendant. *Held*, that the decision on the former point, although unnecessary for the disposition of the case, is *res judicata*. *Green* v. *Edwards*, 77 Atl. 188 (R. I.).

When a judgment is based upon two distinct grounds, either of which is sufficient for the determination of the case, it cannot be said of either point that its determination was necessary to the decision. But if both points present issues material to the case, the doctrine of *res judicata* applies to both. *First Nat. Bank of Covington* v. *City of Covington*, 129 Fed. 792. The contrary holding of the first case is well matched by that of the second, which goes to the opposite extreme. Findings on immaterial questions, even though put in issue and directly decided, are, by the great weight of authority, not *res judicata*. *House* v. *Lockwood*, 137 N. Y. 259; *Hardy* v. *Mills*, 35 Wis. 141. Especially should this be the case where the decision on the collateral point is in favor of one party and final judgment is rendered for the other.

RIGHT OF PRIVACY — INFRINGEMENT OF RIGHT — WHAT CONSTITUTES INFRINGEMENT UNDER NEW YORK STATUTE. — A New York statute prohibits the use for advertising purposes or for the purposes of trade, of the name or picture of any person without his written consent. Without such authorization the defendant supplied various moving-picture exchanges with films containing the name and a pictorial representation of the plaintiff. *Held*, that the plaintiff is entitled to an injunction and damages. *Binns* v. *Vitagraph Co. of America*, 67 N. Y. Misc. 327 (Sup. Ct.).

The defendant newspaper, in connection with a biography of the plaintiff, published his picture without his written consent. Under the same statute, a motion for an injunction was made. *Held*, that the motion be denied. *Jeffries* v. *New York Evening Journal Publishing Co.*, 67 N. Y. Misc. 570 (Sup. Ct.).

For references to this statute and to discussions of the right to privacy, see 22 HARV. L. REV. 232.